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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2010-14

13 **ASTA MARIA BATES**
P.O. Box 165
14 Felton, California 95018

ACCUSATION

15 Registered Nurse License No. 364821

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about August 31, 1983, the Board of Registered Nursing issued
23 Registered Nurse License Number 364821 to Asta Maria Bates (Respondent). The Registered
24 Nurse License was in full force and effect at all times relevant to the charges brought herein and
25 will expire on August 31, 2009, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Registered Nursing
28 (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code (Code) unless otherwise indicated.

2 STATUTORY PROVISIONS

3 4. Section 2750 of the Code provides, in pertinent part, that the Board may
4 discipline any licensee, including a licensee holding a temporary or an inactive license, for any
5 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6 5. Section 2764 of the Code provides, in pertinent part, that the expiration of
7 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
8 against the licensee or to render a decision imposing discipline on the license. Under section
9 2811(b) of the Code, the Board may renew an expired license at any time within eight years after
10 the expiration.

11 6. Section 2761 of the Code states:

12 "The board may take disciplinary action against a certified or licensed nurse or
13 deny an application for a certificate or license for any of the following:

14 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

15 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed
16 nursing functions. . . ."

17 7. California Code of Regulations, Title 16, section 1442, states:

18 "As used in Section 2761 of the code, 'gross negligence' includes an extreme
19 departure from the standard of care which, under similar circumstances, would have ordinarily
20 been exercised by a competent registered nurse. Such an extreme departure means the repeated
21 failure to provide nursing care as required or failure to provide care or to exercise ordinary
22 precaution in a single situation which the nurse knew, or should have known, could have
23 jeopardized the client's health or life."

24 8. California Code of Regulations, Title 16, section 1443, states:

25 "As used in Section 2761 of the code, 'incompetence' means the lack of possession
26 of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed
27 and exercised by a competent registered nurse as described in Section 1443.5."

28 //

1 9. California Code of Regulations, Title 16, section 1443.5 states:

2 "A registered nurse shall be considered to be competent when he/she consistently
3 demonstrates the ability to transfer scientific knowledge from social, biological and physical
4 sciences in applying the nursing process, as follows:

5 "(1) *Formulates a nursing diagnosis through observation of the client's physical*
6 *condition and behavior, and through interpretation of information obtained from the client and*
7 *others, including the health team.*

8 "(2) *Formulates a care plan, in collaboration with the client, which ensures that*
9 *direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and*
10 *protection, and for disease prevention and restorative measures.*

11 "(3) *Performs skills essential to the kind of nursing action to be taken, explains*
12 *the health treatment to the client and family and teaches the client and family how to care for the*
13 *client's health needs.*

14 "(4) *Delegates tasks to subordinates based on the legal scopes of practice of the*
15 *subordinates and on the preparation and capability needed in the tasks to be delegated, and*
16 *effectively supervises nursing care being given by subordinates.*

17 "(5) *Evaluates the effectiveness of the care plan through observation of the*
18 *client's physical condition and behavior, signs and symptoms of illness, and reactions to*
19 *treatment and through communication with the client and health team members, and modifies the*
20 *plan as needed.*

21 "(6) *Acts as the client's advocate, as circumstances require, by initiating action to*
22 *improve health care or to change decisions or activities which are against the interests or wishes*
23 *of the client, and by giving the client the opportunity to make informed decisions about health*
24 *care before it is provided."*

25 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
26 request the administrative law judge to direct a licentiate found to have committed a violation or
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
28 and enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct: Gross Negligence)**

3 11. Respondent is subject to disciplinary action under Code section 2761(a)(1)
4 in that she engaged in unprofessional conduct by committing gross negligence as defined in
5 California Code of Regulations, Title 16, section 1442. The circumstances are set forth in
6 paragraph 12, below.

7 12. On or about June 15, 2006, Respondent, while in the employ of Maxim
8 Healthcare Services, was providing in-home, overnight nursing care for K.M.,^{1/} a 12 year old boy
9 with cerebral palsy. At approximately 7 o'clock that morning, while Respondent was
10 administering Intrapulmonary Percussive Ventilation (IPV) treatment, the patient experienced
11 difficulty in breathing and the patient's body and extremities began to jerk rapidly. After waiting
12 three to four minutes, Respondent discontinued the IPV treatment and left the room to call for the
13 patient's mother, a licensed vocational nurse. The patient's mother, upon hearing a high pitched
14 stridor coming from her son and finding him unresponsive, immediately began emergency
15 resuscitation procedures. Respondent committed gross negligence when she failed to
16 immediately discontinue IPV treatment, failed to immediately begin emergency resuscitation
17 procedures, and failed to stay by her patient's bedside during the seizure.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct: Incompetence)**

20 13. Respondent is subject to disciplinary action under Code section 2761(a)(1)
21 in that she engaged in incompetence when she failed to exercise that degree of learning, skill,
22 care, and experience ordinarily possessed and exercised by a competent registered nurse, as
23 defined in California Code of Regulations, Title 16, sections 1443 and 1443.5. Included within
24 said conduct was a failure to recognize signs and symptoms of distress which exacerbated into an
25 acute and potentially fatal respiratory episode, and a failure to implement appropriate nursing
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27 _____
28 1. Patient initials are used to protect the patient's privacy. The patient's full name will be
released to Respondent in discovery.

1 interventions. The circumstances are set forth in paragraph 12, above.

2 **PRAYER**


3 WHEREFORE, Complainant requests that a hearing be held on the matters herein
4 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

5 1. Revoking or suspending Registered Nurse License Number 364821, issued
6 to Asta Maria Bates;

7 2. Ordering Asta Maria Bates to pay the Board of Registered Nursing the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 125.3; and

10 3. Taking such other and further action as deemed necessary and proper.

11
12 DATED: 7/8/09

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14 
15 RUTH ANN TERRY, M.P.H., R.N.
16 Executive Officer
17 Board of Registered Nursing
18 Department of Consumer Affairs
19 State of California
20 Complainant

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